IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO. 528 OF 2004
IN
ARBITRATION PETITION NO.517 OF 2003

Dr. Kishore Balram Nichani — Appellant

versus

Degustibus HOtels Pvt. Ltd. — Respondent

Mr.H.J. Thakkar, senior counsel with Mr. R.M. Kadam and Mr.M.K. Nesari i/b. M/s.Sanjay Udeshi & co. for the appellant.

Mr. Janak Dwarkadas, senior counsel along with Mr. Sharan Jagtiani, Mr.Parimal K. Shroff, Mr. S. Joshi, Mr.Kalpesh J. Saxena and Ms.Radhika Pizara i/b. M/s. Parimal K. Shroff & Co. for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 25th August 2004

P.C.

Heard the learned senior counsel appearing for the parties.

2. It is not in dispute before us that in the Suit filed by the present respondents before the Small Causes Court the parties have been directed to maintain status quo in respect of the subject property. The said order was passed much before the petition under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by

the present appellant.

3. The learned senior counsel for the appellant submitted that the order of status quo passed by the Small Causes Court is not sufficient and the appointment of Court Receiver is necessary since the respondent has not been paying the conducting charges at the rate of Rs.4,50,000/- per month from the month of November 2003 though under the conducting agency agreement the respondent is required to pay monthly conducting charges. We are afraid, in the facts and circumstances of the case, the order of appointment of Court Receiver is neither necessary nor desirable. Firstly, because the order of status quo is operating for more than eight months. Secondly, the application under section 11 has been made by the appellant as late as in the month of July, 2004 though the dispute arose in the month of November 2004. And thirdly, the premises in dispute are not in use.

4. We are, therefore, not inclined to entertain the appeal.

5. Dismissed in limine.

6. We, however, clarify that in case section 11 application made by the appellant is granted and the

Arbitrator/s is/are appointed, it shall be open to the appellant to apply for interim relief before the Arbitrators under section 17 of the Act of 1996 and in that case, the Arbitrator shall decide the application for interim relief in accordance with law after hearing the parties and taking into consideration the objections of the respondents uninfluenced by the present order and the order passed by the learned Single Judge.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)